

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CONVOLVE, INC.

§
§
§
§
§

vs.

CASE NO. 2:08-CV-244-CE

DELL, INC., ET AL

ORDER

Pending before the court is defendant Western Digital Corporation’s (“Western Digital”) motion for summary judgment of non-infringement (Dkt. No. 336). Western Digital argues that it is entitled to summary judgment of no direct infringement of claims 7-10, 14, and 15 (the “asserted claims”) of the ’473 Patent because Western Digital’s hard disk drives do not meet the “user interface” limitations of the asserted claims. Western Digital also argues that plaintiff Convolve, Inc.’s (“Convolve”) indirect infringement theories fail as a matter of law because Convolve cannot show that: (1) Western Digital actively induced infringement of the ’473 Patent; and (2) Western Digital contributed to infringement of the ’473 Patent, because there are substantial non-infringing uses.

Having carefully reviewed the parties’ arguments and the evidence Convolve has presented in opposition to Western Digital’s motion, and drawing all justifiable inferences in favor of Plaintiff, the court concludes that there are genuine issues of material fact which preclude granting summary judgment of no direct infringement as to the “user interface” limitation. Based on the evidence that Plaintiff has adduced, a jury could reasonably find that the ATA interface is a “user interface” as construed by this court. Furthermore, the court agrees with Convolve that it has presented sufficient evidence from which a reasonable jury could find

that Western Digital actively induced infringement of the asserted claims of the '473 Patent. The court, therefore, concludes that there are genuine issues of material fact which preclude summary judgment on Convolve's inducement claims against Western Digital. Finally, the court concludes that there is a genuine issue of material fact as to whether any of the alleged non-infringing uses that Western Digital identifies are substantial non-infringing uses. As such, the court DENIES Western Digital's motion for summary judgment of non-infringement in its entirety.

SIGNED this 12th day of July, 2011.



CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE